

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12	SANTANA ROW HOTEL PARTNERS, L.P.,)	CASE NO.: C 05-00198 JW
13)	
14	Plaintiff,)	
15	v.)	STIPULATION AND ORDER REGARDING
16	ZURICH AMERICAN INSURANCE)	THE CHANGE OF CERTAIN DATES IN
17	COMPANY, GALLAGHER-PIPINO, INC.,)	THE SCHEDULING ORDER
18	and ARTHUR J. GALLAGHER & CO.)	
19	Defendants.)	
20)	
21	ZURICH AMERICAN INSURANCE)	Amended Complaint Filed: November 30, 2005
22	COMPANY,)	
23	Cross-Complainant,)	
24	v.)	
25	GALLAGHER-PIPINO, INC.)	
26	Cross-Defendant.)	

WHEREAS, the Court issued its Scheduling Order on October 26, 2005;

WHEREAS, on November 16, 2005, the Court granted Plaintiff Santana Row Hotel Partners, LP leave to file a first amended complaint, naming Arthur J. Gallagher & Company as a defendant;

1 WHEREAS, Defendant Zurich filed its Motion to Dismiss Plaintiff's first amended
2 complaint on January 13, 2006, which motion was denied by Order dated February 22, 2006;

3 WHEREAS, Arthur J. Gallagher & Company appeared and filed its answer on January 18,
4 2006;

5 WHEREAS, the parties have and continue to conduct written discovery and to seek to resolve
6 discovery disputes informally, and have and continue to resolve scheduling conflicts concerning the
7 taking of oral depositions;

8 WHEREAS, Defendant Zurich has conducted five depositions on the issue of insurance
9 coverage and Plaintiff has conducted four depositions;

10 WHEREAS, the Gallagher defendants have noticed and commenced but not completed one
11 deposition on the issue of insurance coverage and Plaintiff has noticed two depositions on the issue
12 of insurance coverage, one of which is presently scheduled to be conducted on March 10, 2006;

13 WHEREAS, following a meet and confer process, Defendant Zurich has filed a motion for
14 leave to conduct more than ten fact witness depositions and to depose Plaintiff's F.R.C.P. 30(b)(6)
15 designee for more than seven hours, which motion is presently scheduled for hearing before
16 Magistrate Judge Lloyd on March 28, 2006;

17 WHEREAS, following further meet and confer efforts among the parties, counsel have
18 stipulated that the Defendants (collectively) and Plaintiff may each conduct 20 lay witness
19 depositions without leave of the Court and without waiver of their right to petition the Court for
20 leave to conduct additional fact witness depositions. The issue of the number of hours of testimony
21 Defendants may obtain from Plaintiff's F.R.C.P. 30(b)(6) designee remains on calendar for the
22 March 28, 2006 hearing before Magistrate Judge Lloyd;

23 WHEREAS, several additional depositions of out-of-state third party witnesses remain to be
24 taken on the issues of contract formation, insurance coverage promissory estoppel, third party
25 beneficiary, and Plaintiff's damages, and arrangements must be made for deposing those individuals
26 outside of California, including on the east coast;

27 WHEREAS, pursuant to the October 26, 2005 Scheduling Order, as amended by Orders
28 dated January 10, 2006 and March 7, 2006, the parties' motion(s) for summary adjudication

1 regarding liability on the first and second claims for relief in Plaintiff's first amended complaint are
2 scheduled for hearing on April 24, 2006;

3 WHEREAS, all parties believe that the information they will solicit through the outstanding
4 depositions and written discovery will be critical to (1) the preparation and exchange of their
5 respective expert witness reports pursuant to F.R.C.P. 26(a)(2)(B), and (2) the preparation and filing
6 of dispositive motions;

7 WHEREAS, all parties agree that, under the current schedule, they will not have time to
8 adequately prepare for either a productive F.R.C.P. 26(a)(2)(B) exchange or meaningful dispositive
9 motions;

10 WHEREAS, all of the parties agree that the dates in the Scheduling Order should be changed
11 to allow the parties to complete lay witness deposition discovery, to engage in a more productive
12 expert witness exchange, to otherwise narrow the issues for the submission of dispositive pre-trial
13 motions, and to prepare for trial; and

14 WHEREAS, all parties agree that, in light of the complexity of the issues in dispute and the
15 nature and scope of the discovery that still remains outstanding, the changes requested herein are
16 necessary to the productive and orderly handling of this matter;

17 IT IS THEREFORE STIPULATED by and between the parties hereto, through their
18 respective counsel of record, as follows:

- 19 1. The date regarding expert witness disclosure referenced in paragraph 4 of the
20 Scheduling Order is changed from May 15, 2006 to September 15, 2006;
- 21 2. The date regarding the disclosure of rebuttal expert witnesses referenced in paragraph
22 8 of the Scheduling Order is changed from May 30, 2006 to October 1, 2006;
- 23 3. The date regarding the hearing of motions to exclude experts/expert testimony
24 referenced in paragraph 7 of the Scheduling Order is changed from July 15, 2006 to
25 November 16, 2006;
- 26 4. The date regarding the close of discovery referenced in paragraph 10 of the
27 Scheduling Order is changed from June 30, 2006 to November 15, 2006;
- 28 5. The hearing date for motions or cross-motions for summary adjudication on liability

under the first two claims for relief of Plaintiff's first amended complaint is changed
from April 24, 2006 to no later than October 9, 2006;

6. The last date for hearing of dispositive motions is changed from August 28, 2006 to
December 15, 2006; and

7. The date for the filing and lodging of the Preliminary Pretrial and Trial Setting
Conference statement is changed from September 20, 2006 to January 15, 2007, and
the date for the Preliminary Pretrial and Trial Setting Conference is changed from
October 2, 2006 to January 30, 2007. at 11:00am.

Dated: March 10, 2006

RUBY & SCHOFIELD

/s/
By: Steven A. Ellenberg

Attorneys for Plaintiff, Santana Row
Hotel Partners, L.P.

Dated: March 10, 2006

JONES TURNER, LLP

/s/
By: Steven D. Turner

Attorneys for Defendant, Zurich
American Insurance Company

Dated: March 10, 2006

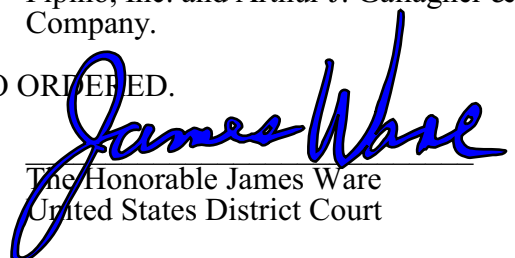
SELVIN WRAITH HALMAN, LLP

/s/
By: Gary R. Selvin

Attorneys for Defendants, Gallagher
Pipino, Inc. and Arthur J. Gallagher &
Company.

PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.

Dated: March 13, 2006


The Honorable James Ware
United States District Court